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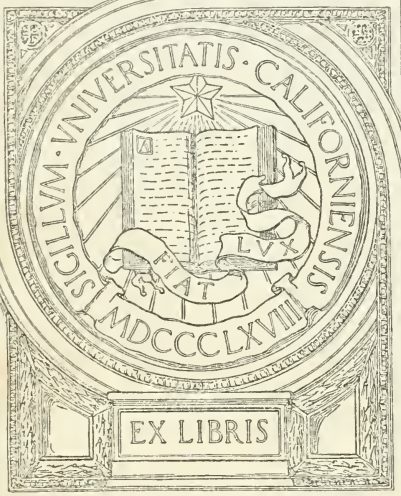
Trade Unions and the Law

by
Walter V. Osborne
and
Mark H. Judge

UNIVERSITY OF CALIFORNIA
AT LOS ANGELES



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Trade Unions and the Law.

By

Walter V. Osborne
(of the Osborne Judgment)

and

Mark H. Judge.

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1911.

THE TRADE UNION ACTS, 1871 TO 1906.

Trade Union Act, 1871. Price 6d.

Trade Union Act Amendment Act, 1876. Price 4d.

Trade Union Provident Funds Act, 1893. Price ½d.

Trade Disputes Act, 1906. Price ½d.

The above may be obtained through the British Constitution Association, 20, Tothill Street, S.W.

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THE NATIONAL UNIONIST ASSOCIATION
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Trade Unions and the Law.

I.

Trade Unions and the Law, with Special Reference to the Judgment in the Court of Appeal and the House of Lords.*

By WALTER V. OSBORNE.

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TRADE UNIONS are the natural successors to the old Trade Guilds. When the various industries were carried on in the houses of the employers and the workmen formed part of the household, eating and working at the same table as the master, one union or guild protected the trade interests of both; but as handwork gave place to machinery and the workroom to the factory, the whole conditions of employment changed, and trade became represented by a vast accumulation of capital on the one hand and large bodies of labour on the other; thus the close relationship previously existing between employer and workmen gradually dropped out, and labour, to protect itself, formed its own Unions.

The object of these Unions was to obtain and maintain fair conditions of employment, and to give benefits to

* *A Paper read at the Fourth Annual Conference of the British Constitution Association, University College, London, December 9, 1910.*

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their members in times of distress, but they were held to be illegal organisations from the fact that they were in restraint of trade. Their funds were thus without protection, and it was difficult to pursue an active policy without being brought into conflict with the law. For many years a persistent attempt was made to gain for the Unions recognition of the law and protection for their funds, and this was ultimately accomplished by the Act of 1869 and subsequent measures.

Thus the law did not create Trade Unions, but only recognised what were already in existence, and it will therefore be readily understood that Parliament recognised the Unions with the objects as they previously existed and not for unknown purposes that might afterwards be introduced.

It is obvious that special privileges cannot be obtained for one purpose and then used for another. It was because they recognised this that the more thoughtful Trade Unionists opposed the efforts that were made to extend the Unions into the region of party politics; but more amazing is the claim that a Trade Union should be permitted to do anything that any other body of persons can do. Thus, if the argument held good, a Union could develop into an universal provider—a Whiteley or a Selfridge—and still carry its privileges and immunities, or, what is more likely, such commercial concerns could by the adoption of some rule in restraint of trade register as a Trade Union and compete against their trade rivals by the use of such privileges, which have become greatly extended by the exemption of income tax and the Trades Dispute Act. It must therefore be clear to all reasonable people that a Trade Union

must either be restricted to its original objects or lose its special privileges.

For this reason the genuine Trade Unionists have all to lose by the conversion of their organisations into political bodies, whereas the Socialists have all to gain, as they have no use for, and see no value in, the Unions apart from politics.

It is altogether wrong to claim, as the Socialist-Labour Party are doing, that the Unions have for the past forty years engaged in political activities in the same sense as they have recently been doing ; but it is true that a few Unions, chiefly amongst the miners, have sent one or more of their members to Parliament to watch their industrial interests, but on all other matters they were wholly free to obey the dictates of their own conscience and the wishes of their constituencies. In other words the Unions only paid for the industrial services and recognised no party politics.

It was not until after the year 1900 that anything of a party nature was to be found in any Trade Union rules. Political and religious matters were purposely kept outside the Unions as being subjects likely to cause dissension amongst the members, and in some cases the rules provided for fines if any member insisted in introducing such subjects. The more general method was to provide a fine for disregard of the Chairman's ruling in the branches, and the bye-laws debarred the introduction of political and religious matters, and thus the fines were more indirect but not less real.

So rigidly were those rules adhered to that the platform of the Unions became so wide and unique that, more than any other organisations of the nineteenth

century, they had within their folds men of all shades of political and religious opinions. Those that were bitterly opposed on non-Union subjects left their disputes outside and came into the Unions as into an industrial brotherhood for one common object—the protection of their labour.

It was into this united family that the Socialists threw the apple of discord, when they formed the Labour Party in the year 1900. They had been carrying on active propaganda for nearly a quarter of a century, and yet it was not claimed that there were more than about 22,000 organised Socialists in this country. Their efforts having proved such an obvious failure they had to look round for new methods; the Trade Unions presented a convenient ground for their operations, and they crept into the Unions not as Trade Unionists, but under the guise of converts for the purpose of capturing the machinery and funds. They formed cliques and corners, and by scheming and manipulations and general pushfulness they succeeded in getting into most of the official positions, and, once firmly seated, they began to move for a general affiliation of the Trade Unions with the Socialist bodies for the purpose of forming a definite political party, at first of a moderate nature, but gradually developing, until Socialism itself was made the test of Trade Unionism.

Lifelong Trade Unionists, who had joined a non-political organisation, were to be expelled, and have the whole of their contributions and benefits confiscated if they refused to support their political opponents. The Socialists had made rapid progress under the shadow of the Taff Vale case, but no sooner did they make their

real object clear in 1903 than there was a revolt against the Labour Party policy throughout the Trade Unions. It was not from the ordinary member alone that the opposition came, for many of the most trusted men in the Labour movement objected to sign the constitution which pledged them to vote on all matters in Parliament as directed, and for that reason such universally respected men as Mr. Thomas Burt, M.P., Mr. Bell, M.P., Mr. Fenwick, M.P., and Mr. Ward, M.P., were excluded.

The position was so absurd that, whilst old Trade Unionists were excluded, any wealthy Capitalist could find admittance by joining the Fabians and signing the constitution. Those who were excluded were attacked and persecuted on every possible occasion, such treatment of old and respected leaders served to centre attention on the many injustices connected with the affiliation to the Labour Party, and demands for either a vote on the question or the repudiation of the ties that bound the Unions to the Socialists became general, but where a vote of the members was taken upon that direct question, it invariably exposed the weakness of the Socialist position, so that whenever possible they avoided the direct vote and acted instead upon the instructions of conferences which by the use of their party machinery they could convert into packed juries.

The law has very wisely laid it down that where two Unions, even though they be both in the same trade, running on similar lines, and advocating the same principles, desire to amalgamate they must first obtain a two-thirds majority of the whole membership. Yet here, where the object is to link a Trade Union, existing on a purely industrial basis, with a definite political

body, and compel all their members, under pain of expulsion, to support that party, it has been held that a bare majority of those voting would commit the whole Society to such affiliation, even although the number voting is not a fourth of the membership. But how much worse when it is done by a mere caucus vote? Although two Ballots have been taken in the Amalgamated Society of Railway Servants, as regards parliamentary representation, in neither of which could they obtain a favourable vote equal to half the membership, the Executive Committee have never dared to take a vote on the burning question of affiliation, notwithstanding that there have been repeated calls for it, and in 1906 about 150 branches demanded such a vote.

Perhaps it would be difficult to find a better illustration of Socialist methods than the following: At the annual conferences of the Amalgamated Society of Railway Servants, held in 1904, and again in 1905, an unsuccessful attempt had been made to get the rules of the Society so altered that all parliamentary candidates, including Mr. Bell, should have to sign the constitution of the Labour Party, and obey the party whip. The matter having failed in 1905, it could not in accordance with rules be brought forward again for three years. Yet in the following June the Executive Committee, mainly Socialists, at the instigation of two branches, again brought the matter forward, and at the annual meeting held in the following October it was adopted, at which there was great discontent. The delegates to the annual meeting were repudiated by the members and about 150 branches claimed a general vote of the Society upon the subject, but this the Executive Committee refused.

Two branches were sufficient to move the Executive to an action in favour of the Socialists which was illegal, as being contrary to rule, but 150 branches were not sufficient to move them in a proper and constitutional course; and yet these people talk of majority rule. If any section of a Trade Union desire to introduce any such revolutionary change as would convert any Society into a definite political body in such a way as to make Socialism the test of membership, at least they should be expected to show that the overwhelming majority of members were actively interested in promoting such change; to show that the majority are not actively opposing it is not sufficient.

But, even though an overwhelming number of the members were in favour of such change that is no reason why, say, 90 per cent. of the members of an industrial organisation should be allowed to compel the other 10 per cent. to support political and religious views to which they are opposed.

It has always been an axiom of our associated life that moneys subscribed for one purpose shall not be used for another, and if that principle is now to fail it cannot but seriously affect the stability of our industrial and commercial basis. Not only is the system of compulsory levies tyrannical as regards the individual, but it must have an adverse effect upon the Trade Unions as a whole; for, by imposing a political test, the membership must be restricted, and, further, the introduction of politics must destroy all feeling of industrial brotherhood, and make collective bargaining, which is the very essence of Trade Unionism, almost impossible, for where the members are divided amongst themselves on political

or religious questions there cannot be that confidence in the leaders that is essential if the conditions of employment are to be arranged between representatives of the employers and the employed, therefore these internal troubles must be reflected in the industrial life outside, and to harass our trade by sectional strikes and general unrest raises a question of National importance.

It was therefore not without good reason that members of the Unions entered upon the struggle to repel this Socialist invasion, and the internal fight went on, year after year, almost unknown to the general public; but here as elsewhere organisation counts, and the organised Socialist minority were more than a match for the unorganised majority. The former were actuated by a fanatical enthusiasm, whilst the ordinary member was apathetic and would rather stay away from the branch meetings than meet the unpleasantness that is one of the penalties of opposing the Socialist, for it is a most remarkable fact that Socialism has a powerful effect upon individual character. It almost invariably follows the adoption of that creed, that the person becomes hectoring, aggressive, and abusive, and therefore objectionable to the man who seeks for peace at any price, and it was this cowardice on the part of the moderate men that made the Socialist success possible.

The fight was made the more difficult because, before commencing their policy of capture, the Socialists had possessed themselves of most of the official positions, and so secured the control of the funds, whilst the law relating to Trade Union benefits played into their hands, inasmuch as the payment of contribution is no guarantee of benefits—which benefits may be withheld without any

reason being given, or any remedy being possible. Thus, unless a member placed his principles before his own pecuniary advantages, there is every inducement to take the line of least resistance by staying away from the branch meeting and refraining from voting. It therefore became evident that the aid of the Law must be evoked if Liberty was to be protected. An action was taken against the Amalgamated Society of Railway Servants to test the legality of these political payments. It is not necessary to trace that action through all the difficulties of its varying career, suffice to say that it was, as is now generally known, wholly successful. The three Judges in the Appeal Court and the five Law Lords were all unanimous in declaring illegal a system which robbed Trade Unionists of their free and unrestricted rights of citizenship.

When the judgment was first delivered the tendency amongst the Socialists was to treat it with contempt, and they expressed the opinion that the Labour Party was sufficiently appreciated to be able to rely upon voluntary contributions, but wherever the voluntary system has been attempted the result has been disappointing. Now they have gone to the other extreme and are, by magnifying the effects, trying to raise the Trade Unionists into revolt against the Judgment, but without any great success; for it is difficult to make any body of men very enthusiastic in claiming back the shackles that had been struck off by the law, and the raging, tearing propaganda of the Labour Party that came in like a lion has the appearance of going out like a lamb; for there is no denying the fact that two-thirds of the Trade Unionists have no love for a Socialist marriage.

There are many, who, whilst they agree that Trade Unions should not use their funds for parliamentary purposes, yet would support their use in municipal affairs, notwithstanding that municipal elections are now mostly fought on party lines and often more bitterly than parliamentary. It often happens that a member of a Trade Union stands as a candidate for a municipal election only to find his Socialist opponent is being supported by Trade Union funds, probably in part subscribed by himself. It is therefore difficult to see where anyone can differentiate between the spending of the association funds on parliamentary and municipal elections. Anything apart from a member's employment and the providing of benefits when incapacitated from employment, must be outside the scope of a Trade Union, and therefore should not be compulsory upon its members.

In many quarters the compulsory political levy is finding support on the conditions that a conscience clause is inserted, so that those declaring a conscientious objection would be relieved from payment. Such a suggestion could only come from those having little or no knowledge of the inner working of Trade Unions; for all who have followed the question closely know that such a levy would be compulsory in all but name. There are so many ways in which the individual member is at the mercy of what may be called the Official party. A few days back a member of the Dockers' Union called upon me, and, after producing his membership card and ample evidence to prove the genuineness of his statements, he informed me that his Union was being exploited by the Socialist; in fact the whole time and efforts of the Society were being taken up with that

subject to the exclusion of trade matters, and that their members were getting sick of it, and that he had spoken to numbers of their members and had no doubt but that they were strong enough to repudiate the whole thing. When asked why he did not make the attempt, he admitted that he dare not. He had a wife and children and was a preference man in the docks and had to work in gangs. The Officials of his branch in the Union, who were Socialists, were the permanent men in charge of the gangs, and if he openly opposed Socialism they would harass him in his employment, and not only get him turned out of the gang, but if his preference ticket was withdrawn it would prevent him getting employment and his home must suffer.

This coercion affects not only the question of employment, but also extends to benefits, as the following shows:—An injunction has been obtained against a London Trade Union to restrain it from using its funds or levying its members for the purpose of Parliamentary Representation, and yet, in defiance of the law, these things are both going on to-day by means of a trick, which is merely a colourable evasion of the injunction, and yet, whilst Liberals and Conservatives alike complain, none dare come forward, as in most shops. Trade Union membership is a condition of employment, and the benefits are valuable, including a pension payment. Many cases might be quoted, but enough has been said to show how tyrannical these bodies have become under Socialist management.

It is perhaps fortunate that our opponents have been sufficiently indiscreet to stump the country, using the vilest and most abusive language towards all who have

opposed their policy. They accuse the Judges of a dishonourable conspiracy against the workers. They threaten to defy the law and appeal to lawlessness and attempts to bully Parliament into submission. These things reveal them in their true light, and make it impossible for Parliament to place any minority at their mercy; for the unenviable position of a conscientious objector may be easily imagined, and, moreover, any such scheme must lead to further friction and litigation. If Parliament recognises the rights of a Trade Union to engage in general political work in its Official position, it must recognise that which directly flows from such a policy. If a Trade Union can run a Candidate for Parliament, it must follow that it can claim that none of its members shall oppose that candidate, so that Liberal or Conservative members must refrain from supporting the candidate of their party on pain of expulsion, and, further, if a Trade Union can pay a Member of Parliament it is only reasonable that that member shall be the obedient servant of that paymaster, and all representation of constituency drop out. By such methods Parliament would no longer be the Parliament of the people, but a mere conglomeration of paid agents, each one striving to protect the interests of his own particular paymaster.

Then all would be for themselves, and no one for the State. The whole principle of representative government would be shifted from a voluntary to a compulsory basis, and would start a revolution, the end of which no one can foresee. Trade Unions properly conducted and restricted to their legitimate objects are a power for good. The standard of living has been raised, and the

conditions of employment materially improved through the principle of collective bargaining. The Unions have been encouraged by many employers, because they tend to steady the Labour Market and make negotiations easier. Without a minimum wage the best employer is often dragged down by the more unscrupulous, whilst in contract work this principle is an advantage to both employer and employed.

Although the present tendency to permeate Trade Unions with the aggressive spirit of Socialism has turned many former friends into opponents, it is a short-sighted policy for employers to attempt to influence their employees against joining the Union ; the only men they could influence would be the moderate ones, who should act as ballast to counteract the aggressive and revolutionary spirits. The present regrettable position has been brought about because the moderate man has not taken his proper share in the management of these organisations. Thus they have got lop-sided, and it is to restore this balance that the thoughts of all friends must be directed, so that Trade Unions may again attain to their former usefulness.

In conclusion, I may perhaps be permitted to refer to the attacks which have been made upon me in the matter of the method I have adopted in my fight with the Amalgamated Society of Railway Servants.

Sir John Gorst, speaking at Whitefield's Tabernacle recently, asked the question, "Where did Osborne get his funds to purchase this celebrated judgment ?" and then proceeded to answer, "They were found by rich men and enemies of labour."

It may be of some interest for me to place on record

here that I approached the Trade Union Congress—that being the highest authority in the trade union world—and offered to allow them to appoint some independent person to investigate the matter, and I undertook to submit such material as I thought would convince them that my action had been *bona fide*, and taken with no ulterior motive. That there had been no personal gain, that the money transactions had been pure, and that there had been no person or body controlling the action other than my own branch. This letter was in the possession of the Congress whilst at the meetings members were making most abusive statements, and yet the Congress did not accept the offer. I wrote again asking what decision the Congress had arrived at and still pressing for investigation, but my letters remain unanswered. The accounts in the Lords Appeal case have been audited at the instigation of my branch by Councillor W. Tyler, J.P., a leading citizen of Walthamstow, who had before him every information as regards income and expenditure.

When I had obtained the favourable decision in the Appeal Court I wrote to the Executive Committee of the Amalgamated Society of Railway Servants offering to attend before them and give every information as regards the finance and conduct of my action, but my offer was not accepted. The total amount collected from start to finish was £655 13s. 11d., and I am prepared to swear that upwards of 75 per cent. of that amount was collected by trade unionists and Labour men in different parts of the country.

I fail to see how the source of the funds affects the principle at stake and shall trouble no further in the

matter so far as the Trade Union Congress is concerned. My action has proved that the trade unions had been acting illegally in using their funds for purposes other than those for which they were subscribed; and, so far as the Amalgamated Society of Railway Servants is concerned, my reward has been expulsion from the Society, after a membership of fifteen years. Others who supported me have met with like treatment. Had we been unsuccessful in our action we should have retired from an organisation having legal power to spend our money for political purposes to which we are strongly opposed. Having succeeded, we have no strong desire to be longer associated with men who desire to possess such an outrageous power over others.

W. V. O.

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Trade Unions and the Law.

II.

The Need for Amendment in the Trade Union Acts, 1871 to 1906.*

By MARK H. JUDGE.

THE INFATUATION which has led the Trades Union Congress to agitate for a reversal of the Osborne Judgment has one curious result, viz., it brings the Socialist and the Individualist to an agreement on the fact that the Trade Union Acts need amendment, though, of course, the amendment desired by the one is directly opposed to that asked for by the other.

What the Trade Union Congress want is the reversion to conditions which held in mediæval times.

The Statute of Labourers passed in the reign of King Edward III. enacted, "that every person, able in body "and under the age of 60 years not having enough "to live upon being required shall be bound to serve "him that doth require him or else be committed to "gaol until he shall find surety to serve and that the "old wages shall be given and no more."

In 1813 an Act was passed by which the acceptance of work was made compulsory and the hours of labour

* *A Paper read at the Fourth Annual Conference of the British Constitution Association, University College, London, December 9, 1910.*

were fixed—first in husbandry and then among artificers of all descriptions.

The Trades Union Congress are now demanding that "the means of production, distribution and exchange "be controlled by a Democratic State." The greatest means of production is man, and control of him by a Democratic State would simply mean that Freedom would be a thing of the past.

My earliest recollection of public affairs has reference to the Trade Union outrages at Sheffield which led to the appointment of the Royal Commission on the Right of Combination and Non-Unionists. After exhaustive inquiry that Commission issued its Report in 1869, from which I quote the two following important paragraphs:—

"With regard to the general question of the right "of workmen to combine together for determining and "stipulating with their employer the terms on which "only they will consent to work for him we think that "full liberty be left to all other workmen to undertake "the work which the parties combining have refused, "and no obstruction be placed in the way of the employer "resorting elsewhere in the search of a supply of labour; "there is no ground of justice or policy for withholding "such a right from the workmen. It cannot be doubted "that a demand backed by the resolution of a large "body of workmen to decline work if the demand be "not acceded to comes with more force than that of an "isolated workman; and we think that the workmen "may reasonably claim to be allowed any advantage "which they can derive from such concerted action, in "bargaining with their employer from time to time

"as to the terms on which they will dispose of their "labour. . . .

"But upon the same principle and for a precisely "similar reason we think that whilst conceding to such "workmen as desire to exercise it an extended right to "combine against their employers, especial care should "be taken that an equal right be secured to those work-"men who desire to keep aloof from the combination, "to dispose of their labour with perfect freedom as they "severally think fit. The power of working, and conse-"quently the value of a man's labour, varies in different "individuals according to their strength, their skill, and "their industry. The workmen who think it for their "advantage to combine together in the disposal of their "labour are no more justified in constraining any other "workman, who does not desire such association, to "combine with them—to bring his labour into common "stock, as it were, with theirs—than an association of "capitalists in constraining an individual capitalist to "bring his capital into common stock with theirs; "and it is the more important that the law should "protect the non-unionist workman in his right freely "to dispose of his labour as he thinks fit, because, "standing alone, he is the less able to protect himself."

The Report of the Royal Commission gave strength to the just demand of the workmen for the right to combine; but, as Lord Justice Lindley has said: "Liberty to combine against oppression is one thing, "and liberty to combine to oppress others is quite "another thing."

The Right to Combine was given to workmen in 1871, in response to what I have described as a just demand, and those of us who will resist to the utmost every proposal to reverse the Osborne Judgment would equally

oppose any encroachment on the right of the workman to combine.

The new law, however, was so drawn that it did much more than give the right to combine, for the Act of 1871 provides that nothing in this Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing any agreement for the application of the funds of a Trades Union to provide benefits to members, or any bond to secure the performance of such agreement.

It is further provided that every person having an interest in the funds of the Trades Union shall have the right to inspect the books and names of the members. The Union is also under the obligation to furnish any person applying with a copy of the rules on payment of a sum not exceeding one shilling.

It is under the powers given them by this Act that Trade Unions expel those members who will not submit to coercion, at the same time confiscating all their subscriptions for however long a period they may have paid.

The Act of 1876 permits youths of 16 years of age to become members of a Trade Union; thus boys are made Trade Unionists before they know what it means, and are taught to accept as a matter of course the control of a committee instead of learning to be self-reliant. Independence of character, if it comes, brings with it the loss of all claim upon the insurance fund to which contributions have been paid.

The Act of 1906 empowers Trade Unions, and Trade Unions only, to boycott and do what is called "peaceably persuade," in their corporate capacity, with impunity, not their own members, but non-unionists. I venture to

assert that a more unjust law was never on the British Statute Book.

In the interests alike of the members of Trade Unions and of every other section of the community, it is to be hoped that the Trades Union Acts, 1871 to 1906, will be thoroughly scrutinised by the British Constitution Association, and that it will promote a Bill which, if passed into law, will provide as follows :—

1. That Trade Unions shall be responsible to their members for the payment of all benefits they have contracted for.

2. That minors shall not be eligible for membership of Trade Unions.

3. That Trade Unions shall not have power to boycott or "peaceably persuade" with impunity. Also

4. That the fullest protection of the law be given to non-unionists, and that its correcting force against all who in any way attempt to coerce those outside the Trade Unions shall be cumulative according to the number joining in the attempt at coercion.

Arguments are hardly needed to enforce such obviously just reforms, but it may make the points clearer to add a few explanatory words :—

1. It would be unjust, and therefore dangerous, for any individual to be permitted by law to break a contract at will, and, therefore, it is much more dangerous for corporate bodies, such as Trade Unions are, to have this power. As Adam Smith says, the "obligation to "performance which arises from contract is founded "on the reasonable expectation produced by a promise, "which considerably differs from a mere declaration of "intention. A promise is a declaration of your desire "that the person for whom you promise should depend

"on you for the performance of it. Of consequence, the "promise produces an obligation, and the breach of it "an injury."

2. Taking into account the serious responsibility attaching to membership of a Trade Union, it is not reasonable that boys of 16 years of age should be eligible for membership.

3. The second paragraph quoted from the Report of the Trade Union Commission, 1869, points out in uncontrovertible language that while conceding to such workmen as desire to combine, the right to do so, "especial care should be taken that an equal right be "secured to those workmen who desire to keep aloof "from the combination to dispose of their labour with "perfect freedom as they severally think fit." This being so, it is unjust for the Act of 1906 to remain on the Statute Book as now, empowering, as it does, Trade Unions to boycott and in other ways persecute those workmen who desire to remain outside the Unions.

4. Again, the Report of the Trade Union Commission of 1869 strikes a clear note in regard to the protection of non-unionists. The Report says: "The law should "protect the non-unionist workman in his right freely to "dispose of his labour as he thinks fit, because, standing "alone, he is the less able to protect himself." For two workers to join in demanding the dismissal of a workman because he will not join their Union should be recognised as a misdemeanour, and in proportion as the number of workmen joining in such a monstrous demand increases, the greater becomes the offence, and therefore the need of greater correcting force is evident.

M. H. J.

Trade Unions and the Law.

III.

The Osborne Judgment and the Trade Union Congress.

By MARK H. JUDGE.

TRADE UNIONS were given a legal *status* in 1871, the Act giving the following definition :—

The term "Trade Union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade. Provided that this Act shall not affect—(1) Any agreement between partners as to their own business; (2) any agreement between an employer and those employed by him as to such employment: (3) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

The Amalgamated Society of Railway Servants of England, Ireland, Scotland and Wales was established in 1872, and was registered as a trade union. Its objects were then within the definition of the law, but in 1905 the annual general meeting of the Society resolved to make alterations in Rule XIII., Section IV., imposing a levy of 1s. 1d. per quarter for the purpose of establishing a fund for the maintenance of Parliamentary representatives, who shall be pledged members of the

Labour Party, and subject to the Whip of this Socialist Party; also to make provision for the registration of Parliamentary constituencies.

Mr. Walter V. Osborne, a member of the Society, objected to this action of the meeting in question, holding the opinion that the alterations said to have been made in the rules were not within the law, and were thus *ultra vires*. He applied for an injunction to restrain the Society from acting on the altered rules. The case was heard by Mr. Justice Neville, who decided that as the alterations had been registered they were valid. Against this decision Mr. Osborne appealed, and the case was decided in the Court of Appeal on November 28, 1908. The appeal was allowed, and the Society was ordered to pay the costs of the action and of the appeal. A request to the Court to suspend the injunction pending appeal to the House of Lords was refused.

The judges who heard the appeal were the Master of the Rolls and Lords Justice Fletcher Moulton and Justice Farwell. The equity of the judgment and the illuminating character of the remarks of the judges add to the lustre of British jurisprudence. In his judgment the Master of the Rolls said:—

> In my opinion, it is not competent for a trade union either originally to insert in its objects or by amendment to add to its objects something so wholly distinct from the objects contemplated by the Trade Union Acts as a provision to secure Parliamentary representation. Trade Unions comprise members of every shade of political opinion, and I cannot think it was the intention of the Legislature that it should be competent to a majority of the members to compel a minority to support by their votes, still less by their subscriptions, political opinions which they may abhor, under penalty, not only of being expelled from the union, and thus losing all chance of benefit, but also the risk and

in some cases, the very serious risk, of not being able to find employment in their trade in consequence of the refusal of trade union members to work with non-union members. This is the conclusion which I have reached by the mere consideration of the Acts of 1871 and 1876. But I think it is permissible to refer to the Trade Disputes Act, 1906, which applies to every trade union under the earlier Acts. It seems to me extravagant to suppose that the immunities and exemptions conferred by that Act can have been intended to apply to any business which a trade union might add to what I may call strictly trade union purposes. In short, that Act confirms the view that a trade union registered under the earlier Acts must be a body with limited objects.

It is unnecessary for me to add that my judgment in no way depends upon the fact that the Socialist party rather than any other political party is that which it is sought to benefit by the amended rule. The appeal must be allowed. There must be a declaration that Rule III., Section XIV., is invalid, and that the same is not binding upon the plaintiff and other members of the Society. And there must be an injunction restraining the defendants from levying from the plaintiff and other members of the defendant Society, and from applying the moneys of the Society for any of the purposes mentioned in Rule XIII., Section IV. The respondents must pay the costs of the action and of the appeal.

Lord Justice Fletcher Moulton agreed that Mr. Osborne was entitled to the whole of the relief which the Master of the Rolls had formulated in his judgment. In his remarks Lord Justice Moulton showed that a trade union could not lawfully have as one of its objects the maintenance of Parliamentary representatives, and also said :—

But there is another and more far-reaching objection to the legality of the rules of this Society as they stand according to the contention of the defendants. One has only to look at the proposed additions to Rule XIII., Section IV., to see that the object of the Parliamentary fund is to procure members of Parliament who shall be bound to vote in a prescribed manner, and that it is in consideration of their undertaking so to vote that the funds

of the Society are to be expended in procuring their election and in supporting them in Parliament. Any such agreement is, in my opinion, void as against public policy. This is best seen by taking the simplest case. Suppose that A contracts with B that he will pay the election expenses of B and support him while in Parliament provided that B will engage to vote as A directs. To my mind, it is clear beyond contest that such an agreement would be void as against public policy, and this none the less though A's motives were perfectly pure, and his intention was solely to use the power he thus obtained for the public good. The reason why such an agreement would be contrary to public policy is that the position of a representative is that of a man who has accepted a trust towards the public, and that any contract, whether for valuable consideration or otherwise, which binds him to exercise that trust in any other way than as on each occasion he conscientiously feels to be best in the public interest, is illegal and void. This deep-seated principle of law is the basis of the illegality at common law of bribery at Parliamentary elections, for the power of voting for a representative is also a trust towards the public. Now, to my mind, it can make no difference whether such a contract be that B shall vote as A tells him, or as any body of third persons may decide. Every such agreement is tainted with the vice of the trustee binding himself contractually that he will exercise a trust in a specified manner to be decided by considerations other than his own conscientious judgment at the time as to what is best in the interests of those for whom he is trustee. And it is no answer to say that before or at the election he openly avowed his intention to be thus contractually fettered. The majority who elected him may be willing to permit it, but they cannot waive the rights in this respect of the minority. By our Constitution, a representative is chosen by vote, and however little the political views of the elected member coincide with those of the minority, they cannot complain. But that election is the election of a representative, and, whoever be chosen, their right remains that he shall be a representative, and not one who has contractually fettered himself in discharge of the duty of representative which he has accepted as regards the public and not only as regards his own supporters. It is no excuse for a breach of trust towards any one of the *cestui que trust* that many, or even a majority of the *cestui que trust*, are willing to permit it. They may waive their own

rights as against the trustee, but they cannot waive the rights of others. Applying these principles to the present case, I am of opinion that the rules as contended for by the defendants would imply the employment of the funds of the Society for purposes contrary to public policy.

Lord Justice Farwell was of opinion that the rules relating to Parliamentary representation were *ultra vires*, and, further, that the purposes for which the money of the union was proposed to be applied are illegal, and, consequently, that the Society must be restrained from making any such application of their funds. He explained the position of a registered trade union as a statutory legal entity, and said :—

Now when the Legislature gives statutory existence to such a body and with such privileges a definition clause is absolutely essential, and accordingly we find that the definition clauses in both Acts are intended to be true definition clauses—that is, precise statements of the essential nature of Trade Unions, and are not expressed to be mere clauses of inclusion. The words are : " 'Trade Union' means," not " includes." Further, the Act of 1906 adopts by reference the same definition clause, and I think, therefore, that we are to consider Section 16 by the light of all three Acts. It is plain that a combination, regulating the relations between workmen and workmen in Section 16 of the Act of 1871, includes such relations as have already been mentioned in Section 5, and, therefore, includes those benefits which the Divisional Court thought were not within the definition. The defendants' contention, that the mere assumption of the name trade union with some one rule that is in restraint of trade can possibly give to the persons assuming it the extraordinary privileges of the Acts of 1871, 1876, and 1906, is extravagant. It is then argued that, even if this be so, the acts complained of here are within the powers of a trade union as defined by the Act. It is said that the object of the union is to improve the condition of its members, that, for example, an eight-hours day would so improve it, and that such a result can be better achieved by legislation than by striking. I disclaim all intention of expressing any opinion on the merits of the claim. Whether the eight-hours

day is or is not beneficial is for the union to decide, not for the Court; but the argument by which the claim is supported, and the means by which it is proposed to carry it out, are questions for the Court. The argument that it will improve the condition of the members proves too much. I will take two illustrations at the opposite ends of the scale. It can hardly be denied that it would improve the condition of the members of any community that they should be induced to abandon anger, hatred, malice, and all uncharitableness, and to live in peace and harmony as Christians, yet it could not be contended that the majority of a trade union, whether Church of England, Roman Catholic, or Dissenting, could compel the minority to pay for the services of a clergyman of the same denomination as the majority to inculcate these doctrines. Or, again, it is better that the members should drink good beer at a fair price rather than bad beer at a high price, but no one could say that the thirsty majority of a trade union could compel the rigid total abstaining minority to contribute to the extent of taking and keeping open licensed premises with a union official as manager to supply the members with liquors. It is impossible to construe Acts like these by the light of arguments founded upon broad generalities.

Referring to Parliamentary representation, Lord Justice Farwell said:—

Freedom of choice is the very corner-stone of representative government, the withdrawal of which would destroy the whole fabric. It is the justification by which legislative interference with the individual freedom of free men in a free country is reconciled with such freedom—namely, that the interference is their own act, because the Act is passed by the representatives of the whole body of free and independent electors freely chosen. Any compulsion, whether physical, spiritual, or temporal, which makes a man subscribe to and support a representative against his will and judgment is as inconsistent with those principles as is similar compulsion to vote, and, indeed, may, in these days, when voters are so numerous, be of even more pernicious effect because more far-reaching. It is not enough to say that a man's vote has not been influenced. It is also necessary for his freedom that he shall not have been coerced into supporting by money or otherwise the candidate whom he wishes to oppose. It is really ludicrous to suggest that this choice is confined to voting on the

day of the poll. A man who, throughout, desires the return of A, and yet wittingly and willingly assists to return B, by subscription or otherwise, stultifies himself and ranks, in point of intelligence, with the man who votes at the poll for both of the opposing candidates. To constrain a man to such imbecility is both to injure and to insult him, and is, besides, an injury to the community in preventing freedom of election. Unless freedom of choice is to be reduced to an absurdity it must extend to the whole conduct of the elector towards the candidate from beginning to end.

The judgment simply enforces the law, at the same time vindicating the liberty of the individual and the independence of Parliament.

It might have been thought that a judgment so obviously just would have been accepted, but such was not the case, and the Amalgamated Society of Railway Servants appealed to the House of Lords. The Law Lords were unanimous in upholding the decision of the Court of Appeal. This decision was given by the Earl of Halsbury, Lord Macnaghten, Lord James of Hereford, Lord Atkinson, and Lord Shaw of Dunfermline, on December 21, 1909. It was pointed out that no other conclusion was possible but that which commended itself to the Court of Appeal.

The Independent Labour Party refused to accept the situation as left by the decision of the House of Lords, and decided to devote themselves to obtaining an amendment of the Trade Union Acts which would make it legal for a majority of the members to coerce the other members in the matter of providing financial support to a political party to which they are opposed.

In 1869 and in 1871 the present writer drew up petitions against the provision of the Trade Union Bill which relieves trade societies from all responsibility as

regards the assurances they make to their members, assurances for which the members pay in hard-earned cash.

The petition of 1869 was presented to the House of Commons, and was in the following terms:—

Sheweth, that your Petitioners are looking with deep interest towards the Trade Unions Bill now before your honourable House, and have seen with sincere regret that the said Bill, while providing for the protection of the funds of Trade Unions, contains no provision for protecting the interest of the members of such Societies. Your Petitioners therefore pray your honourable House to reject any portion of the said Bill which would relieve the Societies of their legal respcnsibility for assurances made to their members. And when thus amended, your Petitioners pray your honourable House to pass the said Bill into law.

The petition of 1871 was presented to the House of Lords after the Bill had passed the House of Commons, and was against the Bill becoming law because of the injustice of the provision which relieves the societies of their legal responsibility to meet the engagements made with their members, and continued:—

Your Petitioners deem such exemption from responsibility to be unjust to the members of the unions, and therefore contrary to the public well-being. Your Petitioners believe it is not desirable the protection given to members of Societies registered under the Friendly Societies Acts should be withdrawn, experience having shown such protection to have been needful, and your Petitioners are therefore unable to see why the members of Trade Unions should be denied the same protection. In the judgment of your Petitioners, it is contrary to all principles of justice for *any* association to be free from legal responsibility in regard to contracts made with members or others; that is presuming such contracts are in accordance with law. Your Petitioners therefore pray your Lordships to reject any part of the present Bill that would relieve Trade Unions from legal responsibility with regard to all contracts they may be allowed to make.

The Lords followed the lead of the Commons and the Bill of 1871 became law. For nearly 40 years Trade Unions have had the power to withold from their members the payment of the benefits in case of sickness, old age, &c., for which they have subscribed, and it is high time this iniquity should cease.

The Trades Union Congress, under the presidency of Mr. James Haslam, M.P., in 1910 took its orders from the Independent Labour Party, and decided to agitate for an amendment of the law which would reverse the Osborne judgment. The following letters relative thereto have passed between Mr. Haslam and Mr. Mark H. Judge, Committee Deputy Chairman of the British Constitution Association :—

B.C.A. Office, 20, Tothill St., S.W., Sept. 19, 1910.
To James Haslam, Esq., M.P.

In your Presidential Address at the Trade Union Congress you said that from 1874 to the decision in the Osborne case "the trade union world had no other idea than that it was one of their objects not only to work for but to maintain in Parliament, Labour men representing the trade union forces of this country, and from 1874 onwards the funds of trade unions have been applied to the purpose of paying and returning members to the House of Commons." You further said it would be seen from this "that at least from a moral point of view no members of the trade unions can claim that the money has been paid in ignorance."

Mr. W. V. Osborne takes exception to your statement, and in a letter published in *The Times* on Thursday last he wrote as follows :—"I joined the Amalgamated Society of Railway Servants in 1892, and at that time politics were forbidden in the branches. New members were obtained on the strict understanding that our Union was wholly independent of political and religious questions. Our rules contained no reference to political action until 1900, and the experience of the A.S.R.S. in these matters has been the experience of the overwhelming number of trade unions. In some societies fines were inflicted

on members who introduced political or religious subjects into the discussions."

In the light of Mr. Osborne's letter it would appear that you were under a misapprehension in what you said. As I am bringing this matter to the notice of the British Constitution Association I should be glad if you would kindly inform me whether you admit that you spoke in error. In another letter Mr. Osborne stated that he has been expelled from the Amalgamated Society of Railway Servants.

I am aware that for nearly 40 years trade societies have had the power to withhold from their members the payment of the benefits in case of Sickness, Old-age, &c., without any reason for so doing. The giving of this power to the societies was defended when the Trade Unions Bill was before Parliament on the plea that the societies would never use it unjustly. May I ask whether you think the Amalgamated Society of Railway Servants are acting justly by Mr. Osborne in robbing him of the assurances for which he has subscribed for some 18 years ?

MARK H. JUDGE.

Trades Union Congress Parliamentary Committee, 42-44, Effingham House, Arundel Street, Strand, W.C., Sept. 30, 1910.

To MARK H. JUDGE, Esq.

Replying to your communication of the 19th inst., I have nothing to add to the statement of fact contained in my address to Congress, the words of which you have embodied in the first paragraph of your letter.

JAS. HASLAM.

October 1, 1910. To JAMES HASLAM, Esq., M.P.

Allow me to point out that your letter of yesterday does not reply to either of the questions put in my letter of September 19.

Unless you are able to contradict the statement I quoted from Mr. Osborne surely you have something to withdraw, if not to add.

As you make no reference to my second question I venture to put it again. Do you think the Amalgamated Society of Railway Servants are acting justly by Mr. Osborne in robbing him of the assurances for which he has subscribed for some 18 years ?

MARK H. JUDGE.

October 6, 1910. To Mr. M. H. Judge.

I have nothing to add to my former letter, nor do I recognise your right to interrogate me. Your question *re* Osborne and the A.S.R.S. would be better put to Mr. Williams.

Jas. Haslam.

October 7, 1910. To James Haslam, Esq., M.P.

I am sorry to have your letter of yesterday, for surely your countrymen have a right to interrogate you on a matter in which you are heading an agitation to alter the law of the land, and on reconsideration I trust that you will favour me with a reply to the questions which I hope I put in a courteous way.

With regard to Mr. Williams, if you will favour me with his address, I will at once put the questions to him, and as I shall be doing it on your suggestion I hope he will recognise my right to interrogate him.

As I am writing, I feel impelled to call your attention to the fact that Mr. Osborne's contributions to the Amalgamated Society of Railway Servants were as follows :—

Three years at 3d. per week	£1 19 0	£18 4 4
Fifteen years at 5d. per week	16 5 4	

Mr. Osborne has been a fortunate member as well as a good one. He has never required the help of the Society, and has therefore not received a penny of financial benefit from it. Until I hear from you that you are of opinion that the Society ought to be legally entitled to rob Mr. Osborne by expelling him from the Society in the way it has done, I cannot believe that you can approve of such an unjust proceeding.

The letter from Mr. Osborne which is published this morning tells of a want of courtesy on the part of the Trades Union Congress, which I trust that you as President will see is not further continued. Galling to the Congress as it may be to have been defeated by Mr. Osborne, it is unworthy of it to ignore the letters he has addressed to it in regard to the funds which enabled him to carry on his fight for independence.

Mark H. Judge.

The letter from Mr. Osborne referred to above is of such imporance to a clear understanding of the situation that it is given in full :—

To the Editor. — Sir John Gorst, speaking at Whitefield's Tabernacle on Sunday last, asked the question, "Where did Osborne get his funds to purchase this celebrated judgment ?" and then proceeded to answer, "They were found by rich men and enemies of labour."

It may be of some interest to Sir John Gorst and your readers to know that I approached the Trade Union Congress —that being the highest authority in the trade union world— and offered to allow them to appoint some independent person to investigate the matter, and I undertook to submit such material as I thought would convince them that the action was *bona fide*, and taken with no ulterior motive, that there had been no personal gain, and that the money transactions had been pure, and that there had been no person or body controlling the action other than my own branch. This letter was in the possession of the Congress whilst they were making the most abusive statements, and yet they dare not accept the offer, because they knew it would prove the *bona fides* of the movement. On September 23 I wrote asking what decision the Congress had arrived at and still pressing for the investigation, but my letter remains unanswered.

One of the London daily papers, my chief opponent in the Press, made similar suggestions in reference to the funds, and I invited them to investigate, and was prepared to submit the whole of my books, documents, and papers, but without success. I tried an anonymous letter, suggesting the need for inquiry, but with the same result. I have made repeated offers to give satisfaction to those who have any standing in the matter.

The accounts in the Lords Appeal case have been audited at the instigation of my branch by Councillor W. Tyler, J.P., a leading citizen of Walthamstow, who had before him every information as regards income and expenditure, even to the last penny stamp.

As soon as I had obtained a favourable decision in the Appeal Court I wrote to the Executive Committee of the A.S.R.S. offering to attend before them and give every satisafction as regards the finance and conduct of my action, but my offer was

not accepted. The total amount collected from start to finish was £655 13s. 11d., and I am prepared to swear on oath, and probably my opponents may be able to submit that test in connection with my expulsion case, that upwards of 75 per cent. of that amount has been collected by trade unionists and Labour men in all parts of the country, and the remainder came in answer to my appeals in small amounts, generally one or two pounds at a time. I have been urged to publish the names, by those who know that I have been expelled for taking the action, and are well aware that those hundreds of trade unionists who assisted me would share the same fate if they were known; in fact, it is for this purpose that their names are required.

But, after all, I cannot see how the source of the funds affects the principle at stake, and shall trouble no further in the matter except to satisfy any contributors that their amounts have been properly taken to account.

W. V. Osborne.

77, Barrett Rd., Walthamstow, Oct. 6, 1910.

When the trade unions were given a legal status in 1871 it was in response to a just demand on the part of workmen for liberty to combine, but the new law was unfortunately so drawn that it did more than this, for it provided that "Nothing in this Act shall enable any court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any agreement for the application of the funds of a trade union to provide benefits to members."

It is to be regretted that the Trades Union Congress has entered upon an agitation for a reversal of the Osborne judgment. It is, however, reasonable to hope that the direction of public attention to the Trade Unions Acts will lead to a righting of the initial blunder of 1871.

The correspondence between the Committee Deputy-Chairman of the British Constitution Association and

the President of the Trades Union Congress for the present concludes with the following letters :—

Nov. 5, 1910. To James Haslam, Esq., M.P.

On October 13 you returned to me the letter I wrote you on October 7, together with one you had written to Mr. C. W. Bowerman, M.P., relative thereto. It appeared to me to be evident that you had inadvertently enclosed those letters in my envelope and had sent to Mr. Bowerman the letter you intended for me, and I therefore at once returned the two letters to you. Up to the present, I have not heard further from you. I shall be glad if you will, at your early convenience, let me know that the letters reached you safely.

Mark H. Judge.

In acknowledgment of the above Mr. Haslam wrote : "Thanks for letter. I received the others all right. Much obliged."

The Trades Union Congress and their President have strange notions of what is due from leaders of a public movement to members of the public who desire to be correctly informed as to the objects of the movement. They may shirk the questions for a time, but only for a time. If they have neither the courage to defend the treatment they have meted out to Mr. Osborne, nor the frankness to apologise for it, silence will not hide their real character from being declared from the house-tops.

M. H. J.

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From Notice in "CONSTITUTION PAPERS."

The place of honour in the *Westminster Review* for June is accorded to Mr. Mark H. Judge's striking parallel between Ibsen's fancy and English fact. In "An Enemy of the People" Ibsen portrays the system of municipal bureaucracy at work. He paints in strong colours its shady secrecies, its spider-webs of collusion and intrigue, its summary suppression of inconvenient frankness. And we say, "This is blank Norwegian realism; this is unhealthy analysis, neurotic decadence! The late Dr. Ibsen was not very well when he wrote this." Then comes Mr. Judge, and shows us exactly the same state of things in our sane and cheerful England, in a municipality which has nothing to distinguish it from a hundred others. Diphtheria carries off a child whose mother lives in apartments. She appeals to the local authorities for assistance in tracing the cause of the disease. Their answer is that sanitary reports are confidential. Confidence, apparently, is not felt in the kind of reception which the public would extend to them. In the most distressing situation, communication of them is blankly refused. What is worse, the Local Government Board confirms the Municipal authority in its obscurantism. We can understand a trading company or a government's declining to make public the reports of its agents. The one has to consider its foreign enemies; the other, its trade rivals. But who threatens the municipality? Why should it not be open? Against whom is this sudden secrecy requisite? In the case of a watch committee, it might be replied,—"the criminal classes." But dwellers in furnished lodgings are not *ex officio* criminals. It is this attitude of essential distrust towards the people that is discrediting municipal politics. The only shadow of guarantee for freedom under a democracy is remorseless publicity. Why were the

reports which the mother appealed for not forthcoming? We understand the case when we said that the excuse was that they were confidential. The town clerk's justification, in a letter to the Local Government Board, was that it is not desirable to give such information to "anyone who likes to demand it." Anyone who likes to demand it! And the demand had been made by a mother who had lost her child! Another ugly feature of the case emphasised by Mr. Judge is the muzzling of the Press. No one can be ignorant of the fact that newspapers, from motives which often are very amiable, do occasionally suppress matter which would give needless pain. But it is a surprise to find all the papers of a given locality, with one exception, obeying the behest of the local health committee, and burking all reference to what one of them styled "a serious indictment of the sanitary authorities of the town," until they, the health committee, had had time to frame an answer to the charge. Mr. Judge brings to the investigation of the matter expert technical knowledge and strong common sense, and certainly makes out a case for inquiry. We recall a somewhat similar case in which a shower of abuse was poured upon a medical officer of health simply because he took the obvious precaution of closing the Board schools when fever was prevalent in them. The whole question of the powers of municipalities is obviously in need of close examination, and we consider that this article ought to awaken the country to a sense of that necessity. This is also the opinion of the editor of the *Westminster Review*. In a letter accompanying the issue he calls attention to the unsatisfactory attitude of the Local Government Board in such matters, and instances the revelations made at Poplar and Stepney last month by Mr. H. Marks and the Rev. Mr. Higley.

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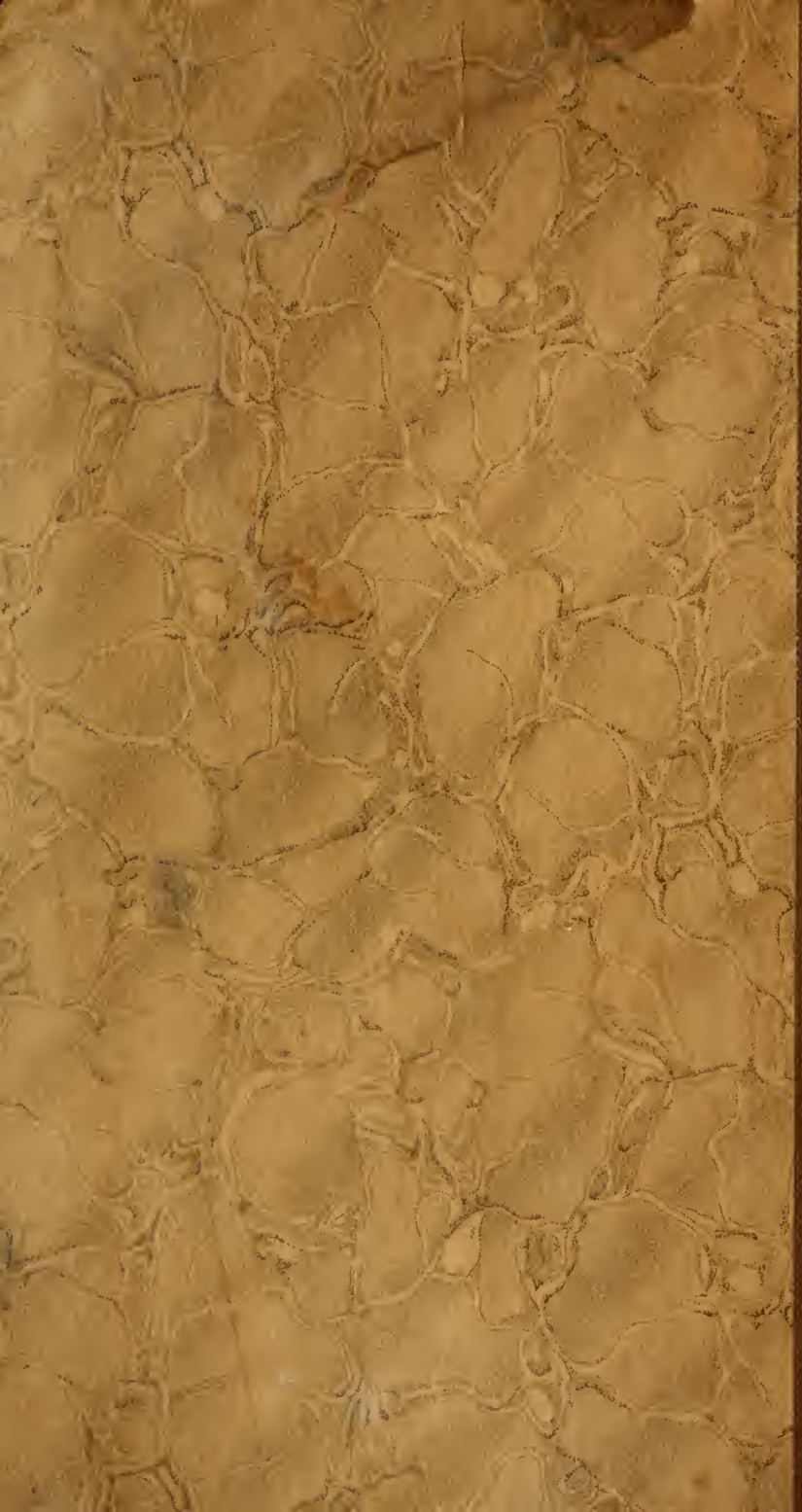
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